

agency's termination or nonrenewal action.

[52 FR 32551, Aug. 28, 1987, as amended at 56 FR 48865, Sept. 26, 1991; 59 FR 56236, Nov. 10, 1994]

**§ 442.42 FFP under a retroactive provider agreement following appeal.**

(a) *Basic rule.* Except as specified in paragraph (b) of this section, if an NF or ICF/IID prevails on appeal from termination or, in the case of an ICF/IID, nonrenewal of a provider agreement, and the State issues a retroactive agreement, FFP is available beginning with the retroactive effective date, which must be determined in accordance with § 442.13.

(b) *Exception.* This rule does not apply if CMS determines, under § 442.30, that the agreement is not valid evidence that the facility meets the requirements for participation. This exclusion applies even if the State issues the new agreement as the result of an administrative hearing decision favorable to the facility or under a Federal or State court order.

[52 FR 32551, Aug. 28, 1987, as amended at 59 FR 56236, Nov. 10, 1994]

**Subpart C—Certification of ICFs/  
IID**

**§ 442.100 State plan requirements.**

A State plan must provide that the requirements of this subpart and part 483 are met.

[53 FR 20495, June 3, 1988]

**§ 442.101 Obtaining certification.**

(a) This section states the requirements for obtaining notice of an ICF/IID's certification before a Medicaid agency executes a provider agreement under § 442.12.

(b) The agency must obtain notice of certification from the Secretary for an ICF/IID located on an Indian reservation.

(c) The agency must obtain notice of certification from the survey agency for all other ICFs/IID.

(d) The notice must indicate that one of the following provisions pertains to the ICF/IID:

(1) An ICF/IID meets the conditions of participation set forth in subpart I of part 483 of this chapter.

(2) The ICF/IID has been granted a waiver or variance by CMS or the survey agency under subpart I of part 483 of this chapter.

(3) An ICF/IID has been certified with standard-level deficiencies and

(i) All conditions of participation are found met; and

(ii) The facility submits an acceptable plan of correction covering the remaining deficiencies, subject to other limitations specified in § 442.105.

(e) The failure to meet one or more of the applicable conditions of participation is cause for termination or nonrenewal of the ICF/IID provider agreement.

[56 FR 48866, Sept. 26, 1991, as amended at 57 FR 43924, Sept. 23, 1992; 59 FR 56236, Nov. 10, 1994]

**§ 442.105 Certification of ICFs/IID with deficiencies: General provisions.**

If a survey agency finds a facility deficient in meeting the standards for ICFs/IID, as specified under subpart I of part 483 of this chapter, the agency may certify the facility for Medicaid purposes under the following conditions:

(a) The agency finds that the facility's deficiencies, individually or in combination, do not jeopardize the patient's health and safety, nor seriously limit the facility's capacity to give adequate care.

(b) The agency finds acceptable the facility's written plan for correcting the deficiencies.

(c) If a facility was previously certified with a deficiency and has a different deficiency at the time of the next survey, the agency documents that the facility—

(1) Was unable to stay in compliance with the standard for ICFs/IID for reasons beyond its control, or despite intensive efforts to comply; and

(2) Is making the best use of its resources to furnish adequate care.

(d) If a facility has the same deficiency it had under the prior certification, the agency documents that the facility—